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DONNA LEE SACCOCCIA

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

DONNA LEE SACCOCCIA,

Case No. 91-115 (T)

Petitioner

vs.

UNITED STATES OF AMERICA,

Respondent.

**PETITION FOR WRIT OF
ERROR CORAM NOBIS TO
VACATE FORFEITURE
JUDGMENT AND MOTION FOR
REFUND.**

**[28 U.S.C. §1651(a); 28 U.S.C.
§1355]**

Petitioner DONNA LEE SACCOCCIA, hereafter, "Petitioner," respectfully requests that this Court issue an Order granting a Writ of Error Coram Nobis, pursuant to 28 U.S.C. § 1651(a), vacating its criminal forfeiture judgment entered against her, on May 21, 1993, in the amount of \$136,344,231.86, all amendments thereto, and all subsequent related forfeiture orders.

Pursuant to 28 U.S.C. § 1355, Petitioner also moves this Court for an order directing that Respondent United States refund all amounts seized by it to date, under the invalid forfeiture orders and judgments, in an amount according to proof at the hearing on the motions.

These Motions are based on the recent United States Supreme Court decision of *Honeycutt v. United States*, --- U.S.---, 137 S. Ct 1626 (2017).

FACTUAL BACKGROUND

Petitioner alleges as follows:

1 1. On April 29, 1994, pursuant to 18 U.S.C. § 1963(a)(3), following her
2 convictions of one Count of RICO Conspiracy and various money laundering counts,
3 in violation of 18 U.S.C. § 1956 and 1957, after finding Petitioner jointly and
4 severally liable for the entire amount of funds laundered by all her codefendants, the
5 district court entered a final order, forfeiting \$136,344,231.86, of Petitioner's real
6 and personal property, as substitute assets, under 18 U.S.C. § 1963(m). See *United*
7 *States v. Hurley*, 63 F.3d 1 (1st Cir. 1995)(affirming this Court's forfeiture judgment
8 in *United States v. Saccoccia*, 823 F. Supp. 994, 1007(D.R.I. 1993).

9 Petitioner remains subject to the \$136,344,231.86 forfeiture order, which she has
10 been paying off in monthly payments.

11 2. Petitioner had no prior criminal history. Petitioner is almost 66 years of
12 age, works at a low-paying job, below her educational capabilities, due mainly to her
13 conviction, lengthy period of imprisonment and forfeiture judgment. She currently
14 lives at or near the federally defined poverty level. Petitioner will be unable to repay
15 this forfeiture judgment during her lifetime.

16 3. On Petitioner's appeal, after acknowledging that a good argument to the
17 contrary could be made based on the statutory language, the Circuit Court adopted
18 the reasoning of the District Court and held that "proceeds" within the meaning of 18
19 U.S.C. § 1963(a)(3), are not limited to a defendant's "laundered funds that the
20 defendant personally obtained, but rather, encompass "funds obtained by other
21 members of the conspiracy [as long as] "the laundered funds obtained by other
22 members of the conspiracy would be attributed only to the extent that they were
23 reasonably foreseeable to the particular defendant." See *United States v. Hurley*, 63
24 F.3d 1, 21-22 (1st Cir. 1995).

25 4. The District Court never determined the actual "proceeds" obtained by
26 Petitioner prior to its forfeiture order. Rather, the district court found the Petitioner
27 liable to forfeiture in the aggregate amount of "proceeds" obtained by all
28 conspirators. This court interpreted 18 U.S.C. §1963(a)(3) as requiring forfeiture

1 from Petitioner of all funds and substitute assets she reasonably could have foreseen
 2 as being obtained by all other coconspirators.

3 *United States v. Saccoccia*, 823 F. Supp. 994, 1005 (D.R.I. 1993).

4
 5 **II. MEMORANDUM OF LAW IN SUPPORT OF PETITION**
 6 **FOR WRIT OF ERROR CORAM NOBIS.**

7 **A. Honeycutt v. United States**

8
 9 In the landmark case of *Honeycutt v. United States*,
 10 --- U.S.---, 137 S. Ct. 1626 (2017) ("*Honeycutt*"), the Supreme Court held that
 11 proceeds forfeited under 21 U.S.C. § 853 (a)(1), are limited "to property the
 12 defendant himself actually acquired as the result of the crime" and rejected the lower
 13 courts' conclusion, as did the District Court in Petitioner's case, that "the Court
 14 cannot construe a statute in a way that negates its plain text, and here, Congress
 15 expressly limited forfeiture to tainted property that the defendant herself obtained.
 16 As explained above, that limitation is incompatible with joint and several liability, as
 17 imposed on Petitioner. See *Honeycutt*, 137 S. Ct. 1626, and fn. 2.

18 *Honeycutt* based its decision on principles of statutory interpretation erroneously
 19 rejected by *United States v. Hurley*, 63 F.3d 1 (1st Cir. 1995), concluding that:

20 "Section 853(o) directs that 'the provisions of [§853] shall
 21 be liberally construed to effectuate its remedial purposes.
 22 The Government points to this as license to read joint and
 23 several liability into the statute. But the Court cannot
 24 construe a statute in a way that negates its plain text, and
 25 here, Congress expressly limited forfeiture to tainted
 26 property that the defendant obtained. As explained above,
 27 that limitation is incompatible with joint and several
 28 liability." *Id.*, at fn. 2

1 **B. The *Honeycutt* Interpretation Of Proceeds Is**
 2 **Applicable To 18 U.S.C. § 1963(a)(3)**

3 This Circuit has recognized that courts consistently have construed the RICO
 4 forfeiture statute, 18 U.S.C. §1963, and 21 U.S.C. § 853, in similar fashion.
 5 Accordingly, the First Circuit, along with other Circuits has held that “case law
 6 under 18 U.S.C. § 1963 is persuasive in construing 21 U.S.C. § 853, and vice versa.”
 7 *United States v. White*, 116 F.3d 948, 950 (1st Cir. 1997)(holding government need
 8 not prove defendant personally used property to conduct illegal activity in section
 9 853 forfeiture action). See, *United States v. McHan*, 101 F.3d 1027, 1042 (4th
 10 Cir.1996), cert. denied, 520 U.S. 1281 (1997); *United States v. Libretti*, 38 F.3d 523,
 11 528, n. 6 (10th Cir.1994), aff’d, 516 U.S. 29 (1995); *United States v. Bissell*, 866
 12 F.2d 1343, 1348 n. 3 (11th Cir.1989); *United States v. Benevento*, 663 F. Supp. 1115,
 13 1118 n. 2 (S.D.N.Y.1987), aff’d per curiam, 836 F.2d 129 (2d Cir.1988); see also
 14 *United States v. Gjeli*, 867 F. 3d 418, 427-439 (3d Cir. 2017)(forfeitures pursuant to
 15 18 U.S.C. § 1963, and 18 U.S.C. § 981(a)(1)(C); “a review of the text and structure
 16 of those statutes reveals that they are substantially the same as the one under
 17 consideration in *Honeycutt*. We thus see no reason why the holding in *Honeycutt*
 18 does not apply with equal force to those statutes. Joint and several liability therefore
 19 cannot be imposed in these cases. Instead, forfeiture is limited to property each
 20 defendant himself actually acquired as the result of the crime.” (internal quotations
 21 omitted).

22 **C. Petitioner Is Entitled To a Writ of Error Coram Nobis.**

23 Pursuant to the All Writs Act, 28 U.S.C. § 1651(a), a district court is
 24 authorized to grant the common law writ of error coram nobis. *United States v.*
 25 *Morgan*, 346 U.S. 502, 511 (1954) (holding that the enactment of 28 U.S.C. § 2255
 26 did not supersede the availability of writ of coram nobis).

27 The writ is available as a “remedy of last resort for petitioners who are no
 28 longer in custody pursuant to a criminal conviction and therefore cannot pursue

1 direct review by appeal, or collateral relief by a petition for writ of habeas corpus.
 2 *Fleming v. United States*, 146 F.3d 88, 89-90 (2d Cir. 1998). This court is authorized
 3 to grant the writ, “under circumstances compelling such action to achieve justice.”
 4 *Morgan*, supra, 346 U.S. at 511.

5 Although the writ of error coram nobis was available at common law only for
 6 errors of fact, its scope has expanded to allow relief for fundamental errors of law.
 7 See *DeCecco v. United States*, 485 F.2d 372, 373 (1st Cir.1973) (vacating a federal
 8 tax conviction based on a subsequent Supreme Court decision providing Fifth
 9 Amendment defense to charge); *United States v. Mandel*, 862 F.2d 1067, 1074–75
 10 (4th Cir.1988); (jury instructions invalid after a subsequent Supreme Court decision);
 11 *United States v. Loschiavo*, 531 F.2d 659, 666–67 (2nd Cir.1976) (conviction
 12 vacated because federal offense “never existed,” based on subsequent Supreme Court
 13 decision); *Cardall v. United States*, 599 F. Supp. 912, 915 (D.Utah 1984) (coram
 14 nobis encompasses “legal errors of a fundamental proportion”); *United States v.*
 15 *Wickham*, 474 F. Supp. 113, 116 (C.D.Cal.1979) (present-day scope of coram nobis
 16 is broad enough to encompass “legal errors of a fundamental proportion”); cf.
 17 *United States v. Sawyer*, 239 F.3d 31, 38 (1st Cir. 2001) (writ denied without
 18 deciding issue. Finding no fundamental error of law).

19 In determining whether to grant a writ of writ of error coram nobis, courts use
 20 a three-part test: a petitioner must 1) explain his failure to seek relief from the
 21 judgment earlier; 2) demonstrate continuing collateral consequences from the
 22 conviction¹; and 3) prove that the error is fundamental to the validity of the

24 ¹ The distinction between direct and collateral consequences depends on whether the consequence
 25 represents a definite, immediate, and largely automatic effect on the range of a defendant's
 26 punishment.” *United States v. Bouthot*, 878 F.2d 1506, 1511 (1st Cir.1989) Petitioner continues to
 27 suffer from direct consequences from the forfeiture judgment. In criminal cases, the collateral
 28 consequences requirement means that a defendant wishing to continue his appeals after the
 expiration of his sentence must suffer some “continuing injury” or “collateral consequence.”
 sufficient to satisfy Article III Section 2. When a defendant challenges his underlying conviction,
 collateral consequences are presumed. See *Sibron v. New York*, 392 U.S. 40, 55 (1968). Petitioner
 (Continued...)

1 judgment. See *United States v. Sawyer* 239 F.3d at 38; *United States v. Barrett*, 178
2 F.3d 34, 56, n. 20 (1st Cir. 1999).

3 **2. Petitioner Is Justified in Not Seeking Relief from Judgment Earlier.**

4 Prior to June 5, 2017, the date of the Supreme Court decision in *Honeycutt v.*
5 *United States*, --- U.S. ---, 137 S.Ct. 1626, Petitioner had no legal basis for filing a
6 petition for writ of error coram nobis. Thereafter, Petitioner diligently prepared this
7 Petition in a timely manner, within the analogous AEDPA limitations period. This
8 petition is therefore timely. See *Telink. Inc. v. United States*, 24 F.3d 42, 47 (9th Cir.
9 1994)(this requirement ensures a petitioner will not avoid an analogous limitations
10 period as a safe haven for prejudicing the government, willfully delaying the
11 assertion of his or her rights) and raising the claim after the inexcusable delay has
12 impaired the government's ability to respond to the allegations or to proceed to
13 retrial.”).

14 **3. Teague v. Lane Does Not Preclude Relief.**

15 *Teague v. Lane*, 489 U.S. 288 (1989), bars collateral attack of a final
16 conviction on the basis of a Supreme Court decision that announced a “new rule.”
17 Here Petitioner’s forfeiture conviction was final years before the June 5, 2017
18 *Honeycutt* decision and Petitioner had long since completed her sentence for the
19 crimes for which she was convicted.

20 *Teague* defined a “new rule” as one that “breaks new ground or imposes a new
21 obligation on the States or Federal Government.” See *Teague*, 489 U.S. at 301. The
22 Supreme Court announces a new rule if “the result was not dictated by precedent
23 existing at the time the defendant's conviction became final.” *Id.* Here there was no
24

25 _____
26 (...Continued)

27 thus satisfies the collateral consequences prong of coram nobis relief, by this presumption, since
28 Petitioner challenges the forfeiture judgment against her or by the averments that she remains
substantially affected by the forfeiture judgment. See p.2, ¶2, *supra*.

1 Supreme Court or First Circuit applicable precedent at the time the forfeiture
2 judgment was rendered against Petitioner. Rather, the Supreme Court in *Honeycutt*
3 first engaged in an interpretation of the relevant statutes in determining that Congress
4 had not intended to impose joint and several liability for conspirators subject to
5 personal forfeiture.

6 Additionally, Petitioner raises a constitutional, nor merely a procedural claim,
7 since joint and several forfeiture liability was not authorized by law. See *United*
8 *States v. Mandel*, 862 F.2d 1067, 1074–75 (4th Cir.1988); (law given to jury in
9 instructions invalid after a subsequent Supreme Court decision); see also *Anderson v.*
10 *Kibbe*, 131 U.S. 145 (1977) (due process requires that each fact necessary to
11 constitute the charged offense be proven.

12 Petitioner is subject to a personal criminal forfeiture judgment pursuant to 18
13 U.S.C. § 1963(a)(3) and alleges a due process violation in the District Court’s failure
14 to establish each element of 18 U.S.C. §1983(a)(3).

15 **4. *Honeycutt* Requires the Petition Be Granted.**

16 Petitioner is aware that coram nobis may be granted only in cases of
17 “fundamental” legal error. See *United States v. George*, 676 F. 3d 249, 256 (1st Cir.
18 2012).

19 This is such a case. See *United States v. Mandel*, 862 F. 2d 1067, 1075 (4th
20 Cir. 1998) (coram nobis granted for instructing jury on elements of charged mail
21 fraud offense later clarified as erroneous by Supreme Court); *United States v.*
22 *Travers*, 514 F.2d 1171 (2d Cir.1974) (same); *United States v. Loschciavo*, 531 F2d
23 650, 666 (2d Cir. 1976) (coram nobis granted where the record discloses no proof of
24 element of the crime charged establishing “fatal constitutional taint for lack of due
25 process of law”).

26
27 **5. *28 USC 1355* Allows Petitioner To Recover**
28 **Forfeited Assets.**

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2
3 Generally, when the United States wrongfully exacts a penalty, the person
4 files an action in the Court of Federal Claims seeking the return of the funds alleged
5 to have been wrongfully obtained by the government. The Tucker Act, 28 U.S.C. §
6 1491, provides jurisdiction in the Court of Federal Claims to recover “exactions”
7 alleged to have been illegally imposed by federal officials (except where Congress
8 has expressly placed jurisdiction elsewhere).” *Aerolineas Argentinas v. United*
9 *States*, 77 F.3d 1564, 1572-73 (Fed.Cir.1996) The Court of Federal Claims, has held
10 that jurisdiction to "recover" forfeitures lies with the district courts pursuant to 28
11 USC 1355; see also *Fischer v. United States*, 96 Fed. Cl. 70, 78 (2011) (noting the
12 jurisdiction of District Courts to adjudicate the validity of illegal forfeitures under 28
13 U.S.C. § 1355(a) (2006); *In Elliott v. United States*, 96 Fed. Cl. 666 (2011), the
14 Court of Federal Claims was faced with the question where a person argued that the
15 government wrongfully exacted a criminal forfeiture from his social security check.
16 The CFC held that 28 U.S.C. § 1355 provided jurisdiction with district courts for the
17 plaintiff to challenge the execution of the criminal forfeiture order. Therefore, this
18 Court has the authority to review the wrongful exaction and vacate the Forfeiture
19 Order pursuant to 28 U.S.C. § 1355, considering that *Honeycutt* invalidated the
20 judgment.

21 In the alternative, petitioner may obtain the return of property illegally
22 forfeited to the United States as part of the coram nobis remedy without having to
23 file a separate Tucker Act lawsuit to recover the property. See *Pasha v. United*
24 *States*, 484 F.2d 630, 632 (7th Cir. 1973); *DeCecco v. United States*, 485 F.2d 372,
25 373 (1st Cir. 1973) (incident to coram nobis order vacating criminal judgment,
26 District Court may order return of fine paid as result of judgment without formal
27 Tucker Act pleading).
28

CONCLUSION.

The district court imposed a personal \$136,344,231.86 criminal forfeiture judgment on Petitioner, who is obligated to pay this amount to the United States for the rest of her life. In imposing the judgment, the district court misapplied the statutory prerequisites for the judgment, as subsequently interpreted by *Honeycutt*.

This misapplication of the law constituted substantial constitutional error contrary to the Due Process guarantee of the Fifth Amendment.

As shown above, Petitioner has satisfied all prerequisites for the issuance of a Petition for writ of error coram nobis vacating the forfeiture judgment of the District Court and requiring the return of property seized and forfeited by the government under the judgment which must be vacated.

For all of the foregoing, Petitioner respectfully requests that this Court issue the writ of error coram nobis.

Respectfully submitted,

Dated: May 3, 2017 LAW OFFICES OF OVERLAND & OVERLAND

By: Mark E. Overland

Mark E. Overland
Attorneys for Petitioner
DONNA LEE SACCOCCIA

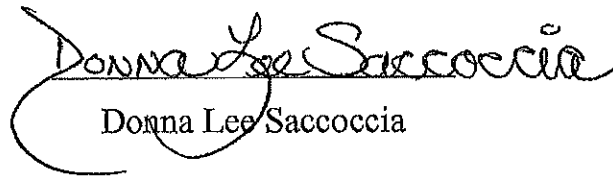
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2 **VERIFICATION**
3
4

5 I am the Petitioner in this Petition for Writ of Error Coram Nobis and have
6 read the foregoing PETITION FOR WRIT OF ERROR CORAM NOBIS and know
7 its FACTUAL BACKGROUND allegations.

8 I am a party to this action. The matters stated in the FACTUAL
9 BACKGROUND part of this petition are true to the best of my knowledge and
10 belief.

11 Executed this 2nd day of May, 2018, at Cranston, Rhode Island.
12

13 I declare under penalty of perjury that the foregoing is true and correct.
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16 
17 Donna Lee Saccoccia
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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

DONNA LEE SACCOCCIA,

Case No. 91-115 (T)

Petitioner

vs.

**MOTION FOR PRO HAC
VICE ADMISSION.
[D.R.I. Loc. R. 5]**

UNITED STATES OF AMERICA,

Respondent.

Pursuant to D.R.I. Loc. R. 5, Mark E. Overland respectfully moves that this issue an Order allowing him to represent as counsel *pro hac vice*, Petitioner Donna Lee Saccoccia ("Petitioner"), in the above-entitled case, No. 81-115 (T), involving her Petition for Writ of Error Coram Nobis to this Court. This motion is based on the long-standing legal relationship between Ms. Saccoccia and the moving party.

Attached hereto, as required by Local Rule 5 is an executed Attorney Certification for Admission *Pro Hac Vice*.

Respectfully submitted,

Dated: May 3, 2017 LAW OFFICES OF OVERLAND & OVERLAND

By: Mark E. Overland

Mark E. Overland

is and have

STATE OF RHODE ISLAND
U.S. DISTRICT COURT DIST RI , SC

_____ COURT

DONNA LEE SACCOCCIA

v.

C.A. No. 91-115(T)

UNITED STATES OF AMERICA

ATTORNEY CERTIFICATION FOR ADMISSION PRO HAC VICE
SUPREME COURT ARTICLE II, RULE 9(A)

☒ I certify that I am a member in good standing of the bar of the following State(s) without any restriction on my eligibility to practice, and that I understand my obligation to notify this Court immediately of any change to my status in this respect. (*Attach additional pages if needed.*)

Jurisdiction	Dates of Admission	Bar Number	Current Status
CALIFORNIA	OCTOBER, 1966	038375	ACTIVE
NEW YORK	MARCH, 1986	1989656	ACTIVE

☒ I certify that I am not currently disbarred or suspended in any court.

☒ Below is a complete list of all matters in which I have been sanctioned or disciplined. (*Attach additional pages if needed.*)

Jurisdiction/Authority	Caption/Case Number	Nature of Allegations	Action Taken
N/A			

☐ The following is a complete and accurate list of *all* proceedings in which I have applied for pro hac vice admission pursuant to Article II, Rule 9(a) of the Supreme Court Rules on the Admission to Practice Law. *(Attach additional pages if needed. Attach docket sheets for all cases listed below and copies of all court orders pertaining to your admission pro hac vice.)*

Court Filed	Case Name/Number	Date Filed	Admission Granted?
DISTRICT COURT RI	913 F.Supp. 129	JANUARY 19, 1996	YES

☒ I have read and certify that the Miscellaneous Petition for Admission Pro Hac Vice filed by local counsel with this certification contains true and accurate information regarding my experience which provides the basis for my admission pro hac vice.

☒ I have read, acknowledge, and agree to observe and to be bound by the local rules and orders of this Court, including the Rules of Professional Conduct of the Rhode Island Supreme Court, as the standard of conduct for all attorneys appearing before it.

☒ I acknowledge that if specially admitted to appear in the above-entitled matter that I will be subject to the disciplinary procedures of the Rhode Island Supreme Court. I hereby authorize the disciplinary authorities of the bar of the State(s) listed above to release any information concerning my practice in said State(s) pursuant to the request of the Disciplinary Counsel of the Rhode Island Supreme Court.

☒ For purposes of this case I have associated with local associate counsel identified below, and have read, acknowledge, and will observe the requirements of this Court respecting the participation of local associate counsel, recognizing that failure to do so may result in my being disqualified, either upon the Court's motion or motion of other parties in the case.

Mark E. Overland
Signature

Mark E. Overland

Print Name

OVERLAND & OVERLAND

Firm Name

100 Wilshire , No. 700, Santa Monica CA 90401

Business Address

CERTIFICATION OF LOCAL ASSOCIATE COUNSEL

I certify that I have read and join in the foregoing Certification, and acknowledge and agree to observe the requirements of this Court as related to the participation and responsibilities of local associate counsel.

Charles J. Reilly
Signature

Charles J Reilly
Print Name

2179
Rhode Island Bar Number.

Law Offices of Reilly & Assoc. LLC
Firm Name

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